IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO.1058 OF 2005

IN

EXECUTION APPLICATION NO.343 OF 2002

IN

SUMMARY SUIT NO.459 OF 2000

Mrs.Madhubala Sinha & Ors. ...Plaintiffs

Versus

Mr.Abdul Karim Khan ...Defendant

And

Rashida Abdul Khan & Anr. ...Applicants

.....

Ms.Leela Malu for Applicants.

Mr.Umesh J.Desai for Judgment Creditors.

.....

CORAM: A.M.KHANWILKAR, J.

OCTOBER 18, 2005.

P.C.

1. Heard Counsel for the parties. Perused the pleadings and the documents on record.

2. By this application, Applicants pray that the attachment levied on immovable property

belonging to Applicant No.1 being Room No.140 behind Building No.103, Opposite Saibaba Mandir, Nehru Nagar, Kurla (East), Mumbai - 400 024 and movables lying in the said premises be set aside and declared bad in law. The affidavit in support of the Chamber Summons also proceeds on the basis that the attachment is in respect of Room No.140 referred to in prayer clause (b) of the Chamber Summons. However, from the reply affidavit filed on record by Plaintiffs, it is seen that the property attached under Warrant of Attachment is Shed No.85/L/MHB/50 at S.G.Barve Marg (South), Allidada Estate, Kurla (East), Mumbai 400 024. The pitch holder's card has also been produced by the Plaintiffs along with the reply affidavit, which indicate that the property which has been attached belongs to Defendant Abdul Karim Khan, who is taxi driver by occupation. In other words, there is nothing on record to suggest that Room No.140 behind building No.103, Opp.Saibaba Mandir, Nehru Nagar, Kurla (East), Mumbai - 400 024 has been attached under Warrant of Attachment. In this view of the matter, the Application filed by the Applicants is misconceived. Applicant No.1

incidentally happens to be the first wife of the Defendant.

3. Be that as it may, as the property attached is different from one in respect of which relief is claimed in this application, Application is rejected.

4. Applicants are granted liberty to take recourse to the appropriate remedy, as may be permissible by law.

A.M.KHANWILKAR, J.